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19 April 1974

MEMORANDUM FOR: Director of Personnel  
SUBJECT : Fair Labor Standards Act Amendments of 1974

1. The Fair Labor Standards Act Amendments of 1974 were signed into Law by the President on 8 April 1974 as Public Law 93-259.

2. These Amendments bring all Federal agencies, including the CIA, under the Fair Labor Standards Act for overtime pay, for minimum wages, and child labor, and under the Age Discrimination in Employment Act.

3. The overtime pay provisions apply to employees designated as non-exempt. The exempt employees who are not covered under the Act include certain employees in executive, administrative, and professional positions and all employees serving in foreign areas. The Civil Service Commission will distribute a tentative list of the exempt categories within the next week. Most employees at GS-11 and below will not be exempt. Exempt employees will continue to be covered under the present provisions of Title 5 of the U.S. Code which covers the present overtime and premium pay system for Federal agencies. Non appropriated fund employees, without regard to pay level or type are designated non-exempt.

4. Primary differences under the FLSA overtime system are as follows:

a. Overtime for non-exempt employees will be compensated for all hours over 40 in a week which the employer "suffers or permits" to be performed. This means that the employer must not permit non-exempt employees to report early and perform work or voluntarily stay after hours to work without compensation. Also, compensatory time cannot be substituted for overtime payment.

b. The overtime rate is not less than one and one-half times the employee's regular rate of pay which is determined by including such additional payments as night differential, Sunday premium pay, and certain post differentials (other than foreign).

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c. A non-exempt employee for overtime purposes is entitled to the highest rate he will receive under applicable pay laws. This means that his rate must be computed both under Title 5 and under the FLSA to determine which is the higher.

d. The new provisions do not apply in foreign areas but they do apply in all States and territories.

5. The Age Discrimination in Employment Act of 1967 is extended to provide that there shall be no discrimination in employment in the Federal Government based on age.

6. Responsibility for compliance with overtime pay provisions has been given to the Civil Service Commission. In conducting review for compliance the Civil Service Commission will be responsible for post audit of overtime pay administration to determine violations and order corrective actions.

7. Responsibility for enforcement of all provisions relating to age discrimination in employment has also been assigned to the Civil Service Commission as well as authority to order appropriate remedies including reinstatement or hiring of employees with or without back pay when age discrimination has been established.

8. Other provisions of the FLSA Amendments do not appear to have an effect on the Agency. These include an increase in minimum wages from \$1.60 to \$1.90 or \$2.00 an hour, and coverage under the child labor provisions of the FLSA.

9. The FLSA Amendments provide that employees can bring civil actions in Federal District Courts for unpaid overtime or for age discrimination without exhausting administrative remedies.

10. The effective date of the FLSA provisions is 1 May 1974. By 26 April the Civil Service Commission will provide instructions for implementing the law.



Chief

Position Management & Compensation Division

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